

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MR.JUSTICE K.MOHANRAM

WRIT PETITION No.45778 of 2006

Brooke Bond Lipton India Limited,
(Now known as Hindustan Lever Limited),
Brooke Fields, Marathahalli P.O.,
Bangalore-560 037.
rep.by its Manager (Legal) ... Petitioner

vs.

1.Girnar Exports Traded by
Sri Harendra Shantilal Shah,
Vidhuit Navinchandra Shah,
Milind Jagadishchandra Shah,
Smt.Charulata Hemant Shah,
Smt.Sarmista Praveen Bhansali,
Sachin Praveen Bhansali,
Utpal Navinchandra Shah and
Pravin Keshav Lal Bhansali,
sGirnar Complex, Kureshi Nagar,
Kurla (East), MUMBAI-460 037.

2.The Deputy Registrar,
Trade Marks Registry,
"Rajaji Bhawan" D - wing,
2nd Floor, Besant Nagar,
Chennai-600 090.

3.Intellectual Property Appellate Board,
2nd Floor, Annexe-1,
Guna Complex, 443, Anna Salai,
Chennai-600 018
Rep.by its Deputy Registrar.

... Respondents

Writ petition under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records in respect of M.P.No.15 of 2006 in TA/47/2003/TM/CH (TMA 6/2003); OA/34/2004/TM/CH; OA/69/2004/TM/CH and TA/305/2004/TM/KOL/3558 and the order dated 07.07.2006 passed

by the Board and quash the same and consequently direct the 3rd respondent to accept the additional evidence.

For Petitioner ... Mr.Satish Parasaran

For Respondent ... Mr.T.N.Daru Walla,
No.1 Senior Counsel for
M/s.Kurian & Kurian

For Respondent ... Ms.P.Bhuvaneshwari
No.2

ORDER

P.K.MISRA, J

The present writ petition is directed against the order passed by Respondent No.3, which is the appellate authority under the Trade Marks Act, 1999. Under the impugned order, the appellate authority has rejected the application filed by the present petitioner seeking permission to adduce additional evidence.

2.The petitioner had filed applications before the Registrar of Trade Marks bearing Nos.398076, 398077, 397359 and 453651. The present respondent No.1 had filed opposition in respect of such applications which had been numbered as MAS 3322, MAS 3306, MAS 3510 and CAL-2702. Such proceedings were considered and ultimately decided against the petitioner and applications were rejected. Against the said order, the petitioner has filed appeal Nos.TA/47/2003/TM/CH (TMA6/2003), OA/34/2004/TM/CH and OA/69/2004/TM/CH and TA/305/2004/TM/KOL. During pendency of such appeals, the petitioner had filed M.P.Nos.86 and 87 of 2004 seeking leave of the appellate authority to file documents as additional evidence.

3.So far as M.P.No.86 of 2004 is concerned, the appellate authority had indicated that such application shall be taken up along with the main appeals. M.P.No.87/2004, wherein the present petitioner had sought the leave of the appellate authority to conduct a market survey and to submit a report, had been rejected at that stage. Thereafter, the appeal was not taken up for long period on account of the retirement of the Chairman of the Appellate Board.

4.Be that as it may, the petitioner, after getting a study report from a third party organization, filed a fresh application under Order 41 Rule 27 CPC to consider the report relating to Market Study as an additional evidence. Objection was filed by the present respondent No.1, wherein it was contended that similar application had already been rejected and there was no justification for filing a fresh application. The appellate authority has rejected such application on the footing that a similar application had already been rejected on an earlier

occasion. It is also observed that the question of grant of Trade Mark should be considered on the basis of materials available on the date of the application and not on the basis of the subsequent events. Such order is being challenged in the present writ petition.

5. Learned counsel for the petitioner submitted that the earlier application under Order 41 Rule 27 CPC had been rejected mainly on the ground that the disposal of the appeal would be delayed if the permission is given to the appellant at that stage to conduct a market survey and to submit a report as additional evidence. It is submitted by the counsel that since the matter had remained pending on its own for more than two years thereafter, there was no justification for the appellate authority to reject out of hand the application filed and the appellate authority should have followed the normal procedure relating to consideration of additional evidence, which should be left to be decided along with the appeal as only in such a case the appellate authority would be in a position to know as to whether the additional evidence is required or not.

6. The learned senior counsel appearing for respondent No.1 has filed a counter affidavit. He has contended that there is no scope for accepting such an application, particularly when similar application had been rejected earlier.

7. The question as to whether an application for additional evidence would be entertained or not is essentially a question of discretion of the appellate authority. In the present case, the appellate authority has considered the matter and thought it fit to reject the application. The question is as to whether such a discretionary order passed by the appellate authority can be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

8. Law is well settled that the High Court, while considering such matters and more particularly interlocutory matters, is not expected to interfere with the discretionary order passed by the authorities concerned, except for any strong and cogent reasons. Moreover, the petitioner would have an opportunity of assailing the legality of the order if ultimately the decision of the appellate authority goes against the petitioner when the appeal is finally disposed of. It is therefore improper to consider the matter on merit at this interlocutory stage.

9. Having regard to the facts and circumstances of the case, we do not think it is a fit case where the jurisdiction of the High Court can be invoked at this interlocutory stage and, therefore, we find no scope for interference at this stage. The writ petition is therefore liable to be dismissed. It is however made clear that in case the decision of the appellate authority ultimately goes against the present petitioner, at that stage, it

would be open to the petitioner to raise all questions, including the questions now raised and the very fact that we have not interfered with the order at the interlocutory stage should not be construed as a ground to reject any such contention to be raised in future in case the necessity arises.

9. Subject to the aforesaid observation, the writ petition is disposed of.

Sd/
Asst. Registrar

/true copy/

Sub Asst. Registrar

gb.

To:

1. The Deputy Registrar,
Trade Marks Registry,
"Rajaji Bhawan" D - wing,
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Chennai-600 090.
2. The Deputy Registrar,
Intellectual Property Appellate Board,
2nd Floor, Annexe-1,
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Chennai-600 018

+1cc to Mr. Sivam Sivanandraj, Advocate Sr 63094

SCD (CO)
km/24.10.

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